

**REMARKS**

**I. Status of the Claims.**

Claims 1-4 and 7-19 are currently pending in the subject application and are presently under consideration.

Claims 5-6 and 20-25 have been withdrawn without prejudice or disclaimer.

Claim 10 is currently amended to better define the claimed invention.

By this Amendment, no new matter has been added to the application.

**II. Response to Restriction Requirement.**

In response to the Restriction Requirement dated January 2, 2008, under 35 U.S.C. § 121 and 372, and in accordance with 37 CFR 1.499, applicants hereby elect the invention indicated by the Office in Group 1 as currently defined in claims 1-4 and 7-19. In accordance with this election, applicants reserve all rights in the non-elected and/or withdrawn claims, including the right to file one or more divisional applications covering the subject matter thereof.

**This election is made with traverse.**

Applicants respectfully submit that the instant application is a 371 of PCT/CA03/01079 and is therefore subject to PCT Rule 13 "Unity of Invention".

Applicants note that the Office has limited its comments to whether the indicated inventions were independent or distinct. Although Applicants make no comment as to whether the indicated inventions are indeed independent or distinct, Applicants would like to direct the Examiner's attention to PCT Rule 13 "Unity of Invention".

In particular, PCT Rule 13.1 states that:

*"The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention")."*

Applicants note that the Office has not established in what sense the indicated prior art of record challenges the linking single general inventive concept defined in the claims.

Furthermore, Applicants would like to direct the Examiner's attention to PCT Rule 13.4 which states that:

*"Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention."*

For instance, claims 5-6 are dependent directly or indirectly on claim 1, and thus incorporate all the features of claim 1, and define a further anchoring step. Although Applicants make no comment as to whether the indicated further anchoring step is indeed an independent or distinct invention, it is respectfully submitted that such is nevertheless in compliance with PCT Rule 13.1.

Reconsideration and withdrawal of the restriction requirement is respectfully requested.

### **III. Species Election**

In response to the species election, Applicants select:

- mesenchymal cells from Group 4A – Claims 1-4 and 7-19 read on this species;
- fibroblasts from Group 4A(d) – Claims 1-4 and 7-19 read on this species;
- one sheet from Group 4B – Claims 1, 2, 4, 7-14 read on this species; and
- connective tissue from Group 4C – Claims 1-4 and 7-19 read on this species.

**The species election is made with traverse.**

Applicants respectfully submit that the traversal is on the grounds that the Examiner has failed to establish that a search of the complete application would be an undue burden as required by M.P.E.P. § 803.

In particular, M.P.E.P. § 803 states that:

*“If the search and examination of all the claims in an application can be made without serious burden, the Examiner must examine them on the merits, even though they include claims to independent or distinct inventions”.*

Applicants submit that a search of the entire application would not constitute an undue burden for the Examiner.

Applicants note that the Office limits its comments regarding the restriction requirement to whether the species were independent or distinct. Although Applicants make no comment as to whether the species are indeed independent or distinct, Applicants would like to direct the Examiner's attention to M.P.E.P. § 808.02, which reads as follows:

*“where the related inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to*

*establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following:*

- (A) *Separate classification thereof: This shows that each invention has attained recognition in the art as a separate subject for inventive effort and also a separate field of search. [...]*
- (B) *A separate status in the art when they are classifiable together: Even though they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the examiner can show a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.*
- (C) *A different field of search: Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries), a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims.*

*Where, however, the classification is the same and the field of search is the same and there is no clear indication of a separate future classification and field of search, no reason exists for dividing among independent or related inventions".*

Applicants respectfully submit that the field of search is the same for each of the species identified in the Office Action having regard to respective Groups 4(A)-(C), and, if not the same, the fields of search for the groups are so greatly overlapping with one another as to be nearly the same. As such, there would not be a serious burden on the Examiner to examine all species jointly. Moreover, the Applicant submits that searches regarding one species would necessarily reveal prior art applicable to the other species, for instance the cell types listed in Groups 4 (A) (for instance, b-c) are generally considered to be multipotent (as are mesenchymal stem cells, which make up a portion of the currently elected mesenchymal cell group), and thus all can easily be searched together by the Examiner.

As such, Applicants respectfully submit that the requirement of a serious burden on the Examiner if the restriction is not required is not satisfied and that the species selection requirement is therefore traversed. Applicants respectfully request that the species in respective Groups 4A, 4B and 4C be jointly searched and examined.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**CONCLUSION**

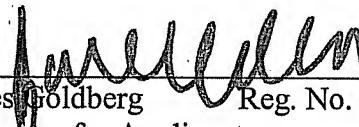
A petition for an extension of time and the required fee to extend the time to reply to the January 2, 2008 Office Action is concurrently filed herewith. In the event any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 04-1679.

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

The Examiner is invited to call Applicants' undersigned representative if any further amendment will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the present response. If the claims of the application are not believed to be in full condition for allowance, for any reason, Applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

Dated: April 2, 2008

  
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